Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

MICHAEL D. VAN DEELEN,

Petitioner,

v.

CITY OF KANSAS CITY, MISSOURI, ET AL.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

1. The City of Kansas City, Missouri, uses a checklist that is over 34 pages long and other criteria in determining whether or not a given employee satisfies the City's residency policy via a "preponderance of evidence" standard. The checklists and other criteria are not communicated or otherwise made available to employees. Furthermore, the checklists and standards to be applied vary from investigation to investigation.

Is the City of Kansas City, Missouri's, residency policy unconstitutionally vague and ambiguous because employees are not informed as to the criteria the City uses in determining residency compliance?

PARTIES TO THE PROCEEDING

Petitioner is Michael D. Van Deelen. He is plaintiff in the District Court and appellant in the Court of Appeals.

Respondents are The City of Kansas City, Missouri; Wayne Cauthen; John Franklin; John Thigpen; Gail Roper; Richard Razniak; Beth Lacey; Rick Brisbin; and Roy Greenway. They were defendants in the District Court and appellees in the Court of Appeals.

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

The opinion of the Eighth Circuit Court of Appeals (App. 1) is unreported. The order denying the petition for rehearing (App. 11) is unreported. The memorandum opinion of the district court (App. 5) is unreported.

JURISDICTION

The judgment of the Court of Appeals was entered on October 19, 2007, and the petition for panel rehearing was denied on November 20, 2007. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioner's "void for vagueness" argument is rooted in the due process clauses of the Fifth and Fourteenth Amendments.

STATEMENT OF THE CASE

This case presents questions about what duty the City of Kansas City, Missouri, owes to its employees in informing them of the detailed "checklists" and other criteria that it uses to determine whether or not a given employee is in compliance with the City's residency policy.

This Court has ruled that municipal residency requirements must be appropriately defined and uniformly applied. *Memorial Hospital v. Maricopa County*, 94 S.Ct. 1076, 1081 (1984); *Dunn v. Blumstein*, 405 U.S. 330 342 n. 13 (1972). In order for a residency policy to be appropriately defined and uniformly applied, a municipality must make its residency policy criteria available to its employees so that they can take the necessary steps to comply with the policy.

In *Fritzshall v. Board of Police Com'rs*, 886 S.W. 2d 20, 28 (Mo.App. W.D. 1994), the court ruled that, if a residency policy required an employee to spend a certain amount of time at an address in Kansas City and to comply with other residency-establishment criteria, then the employee is "entitled to know the specifics of the necessary formula."

The City of Kansas City employs over 34 pages of checklist items to determine whether or not a given employee is in compliance with the City's residency policy. However, the City does not publish the criteria or otherwise inform its employees what is contained in them. Furthermore, the City custom-tailors its

criteria to each individual residency determination investigation. Under this set of circumstances, it is not possible for any given City employee to know what is expected of him or her to be in compliance with the City's residency policy. Rather, it is possible for the City to literally determine that any of its employees is not in compliance with its residency policy.

I. FACTUAL BACKGROUND

The Plaintiff

Plaintiff became employed by defendant City of Kansas City, Missouri, on August 14, 2000. He worked in the Information Technology Department ("ITD"). At the time of his employment, plaintiff lived in Eudora, Kansas. Plaintiff was told that he had to move into the city limits of Kansas City, Missouri, within nine months of his employment date in order to be in compliance with the City's residency policy. That is all plaintiff was told. At trial, the defendants offered no testimony that plaintiff was told to do anything other than "move" into the City within nine months. Prior to the expiration of the nine-month period, plaintiff rented and moved into an apartment at 3006 Grand Avenue, Apartment 16, Kansas City, Missouri.

The City was made aware of plaintiff's new address and place of residence immediately after plaintiff moved into the Grand Avenue apartment. Approximately eighteen months later, while the City

was in the midst of a budget crisis, plaintiff's residency status was challenged for the first time by defendants Thigpen and Greenway. On November 8, 2002, defendant Greenway presented plaintiff with a checklist of items that had not previously been shown to plaintiff. Defendant Greenway alleged that the checklist items provided a preponderance of evidence that plaintiff was in violation of the City's residency policy. The same day defendant Greenway first made plaintiff aware of the checklist's existence, November 8, 2002, defendant Greenway suspended plaintiff from his employment with the City. Plaintiff's suspension was subsequently upheld by an administrative hearing officer. Plaintiff was then terminated from his employment with the City for being in violation of the City's residency policy.

The Use of Checklists to Develop a Preponderance of Evidence.

Defendant Thigpen was the City's Director of Human Resources while plaintiff was employed with the City. Defendant Thigpen was responsible for promulgating the City's residency policy. (App. 14-17). During his trial testimony, defendant Thigpen testified that the City uses a preponderance of evidence standard to determine whether or not a particular employee is a resident of Kansas City, Missouri. (App. 19). To determine the preponderance of evidence, the City looks at a large number of "factual pieces of proof." Defendant Thigpen gave numerous examples

of these factual pieces of proof during his trial testimony. (App. 19-22).

Defendant Greenway does residency investigations for defendant Thigpen. (App. 16-17; 20; 27). Defendant Greenway uses a checklist of items to determine the preponderance of evidence. (App. 23; 33). The checklist contains at least 34 pages of questions and other items used to determine residency. (App. 33). However, employees are not told about the checklist or the items contained in it. (App. 23). Defendant Thigpen testified that he did not think it was pertinent for employees to be aware of the checklist items. (App. 24). The defendants used the checklist to determine that plaintiff was not a resident of Kansas City, Missouri. (App. 31; 32). The first time plaintiff saw the checklist items was on November 8th, the day he was suspended by defendant Greenway. (App. 32; 36).

Defendant Thigpen testified that the City shouldn't have to explain to employees every item that the City might use to prove or disprove residency. (App. 24-25). But defendant Thigpen could not himself clearly define residency as used by the City in its investigations. Defendant Thigpen defined "residency" in terms of itself. (App. 25-26). Defendant Thigpen could not even say how much time an employee had to spend at a Kansas City address to satisfy the residency requirement. (App. 26-27).

Even though defendant Greenway was charged with doing residency investigations, he received no guidance from defendant Thigpen. (App. 27-28). Defendant Thigpen testified that defendant Greenway told him that defendant Greenway consulted with the law department in residency investigations, but defendant Thigpen could not remember when he was told this by defendant Greenway. (App. 28).

Defendant Thigpen's testimony revealed that the City does not use an explicit standard in enforcing the residency ordinance. Rather, the City uses a "general template" and modifies the residency standards in each individual residency investigation. There is nothing in writing concerning this policy. (App. 30).

Cecilia Abbott of the City's Law Department testified that defendant Greenway tailored the checklist for each residency investigation. (App. 34-35). Ms. Abbott testified that she had given defendant Greenway "broad categories of facts" that she (the Law Department) was looking for in order to determine residency violations. Ms. Abbott testified that she had given said categories of facts to defendant Greenway verbally, not in writing. Furthermore, Ms. Abbott testified that the fact categories were never communicated to employees. (App. 37). Ms. Abbott listed some of the fact categories that were not communicated to employees. (App. 37-38).

During trial, defendant Greenway testified that, even though defendant Greenway's operative definition of residence was, "where you lay your head at night", neither defendant Greenway nor any other person involved in the surveillance of plaintiff ever came to plaintiff's listed Kansas City address during the evening to see if plaintiff was there.

II. PROCEEDINGS BELOW

The District Court

This action commenced in November, 2004. The Complaint alleged in paragraph 35 that the residency policy of defendant Kansas City, Missouri, was unconstitutionally vague and ambiguous.

The district court ruled on the parties' motions for summary judgment on January 27, 2006. In its Order, the District Court stated:

> "The Court finds that the parties have raised a genuine issue of material fact as to whether the City's residency policy is unconstitutionally vague and ambiguous as applied to Van Deelen. The City asserts that 'residence' is clearly defined in the text of the ordinance. According to the City, 'it is obvious that most persons of ordinary intelligence understand the meaning of the terms' of the ordinance.
>
> However, Van Deelen has presented sufficient evidence to the contrary from which a reasonable factfinder could conclude that the

City's residency policy was unconstitutionally vague and ambiguous as applied to him. The evidence submitted by Van Deelen could support the conclusion that the City did not clearly and consistently interpret and enforce its residency policy. When questioned about the 'operative definition of residency', Defendant Thigpen stated that he would consider 'where an employee spent the majority of their time; [w]here they left from, where they came back to, where they intended to return, where their family was.' Repeatedly, Defendant Thigpen stated that an employee's compliance with the City's residency policy would be determined based on the 'preponderance of evidence'. However, it is not clear what specific factors or evidence would be considered in determining whether an employee is violating the City's residency policy. Defendant Thigpen was also unable to define certain key terms appearing in Sec. 2-972 such as 'permanent home'; 'true home' and 'fixed home.'

According to Defendant Thigpen, employees were able to seek advice regarding compliance with the City's residency policy from one of the City's approximately 200 supervisors. Defendant Thigpen and Defendant Roper hoped that the supervisors would contact the Human Resources Department before answering employee questions. However, there is no evidence in the record of any written materials or training provided to supervisors regarding the proper interpretation and application of the City's residency policy

or encouraging the supervisors to confer with the Human Resources Department prior to responding to employee inquiries about the City's residency policy.

Even if a supervisor consulted the Human Resources Department about the interpretation and application of the City's residency policy, the record reveals that there is no clear and consistent position on what constitutes compliance with the City's residency policy being circulated among Human Resources personnel. Van Deelen states that he contacted Human Resources Personnel directly seeking advice about the City's residency policy. They informed him that the City's residency policy applied only to him and not to his family and that he could satisfy the requirement by renting an apartment in Kansas City, Missouri and staying in the apartment on nights before work days (i.e. Sunday, Monday, Tuesday, Wednesday, and Thursday). Van Deelen was not informed about any specific factors or evidence, i.e. a drivers license, a bank account, the receipt of mail, etc. that would be considered by the City in determining his compliance with residency requirement.

The record before the Court reveals a great deal of confusion surrounding the interpretation and enforcement of the City's residency policy. The City does not appear to have any written procedures or guidelines governing the residency requirements or the City's investigation into potential violations of the

> policy. In fact, no one knows who initiated the residency complaint against Van Deelen. The record does not reflect that the City's Human Resources Department has developed a clear and consistent interpretation of the City's residency policy. New employees are not provided with any guidance on compliance with the policy, aside from what appears in the Human Resources Manual and Sec. 2-972 of the Code of Ordinances. Supervisors are not instructed on how to respond to employee inquiries regarding the policy. Furthermore, the City Defendants admit that the City does not have any policies or ordinances which govern residency determination investigations or the surveillance of employees during those investigations. This lack of a clear and consistent interpretation and enforcement of the City's residency policy is apt to lead to ad hoc determinations of when the policy has been violated and which employees should be investigated for potential residency violations."

The District Court ruled that plaintiff's claim that the City's residency policy was unconstitutionally vague and ambiguous would proceed to trial.

The District Court conducted a six-day bench trial commencing on February 21, 2006. The District Court failed to allow plaintiff to make an opening statement during the trial even though the Court's Rules of Trial provided for opening statements. (App. 18). Although the District Court had ruled in its summary judgment Order that plaintiff's claim that

the City's residency policy was unconstitutionally vague and ambiguous would proceed to trial, the Court ruled at the beginning of the trial that the trial would be over whether the City's residency requirements were applied differently to plaintiff than other employees. (App. 14).

The District Court issued its Order and Findings of Fact and Conclusions of Law on March 2, 2006. (App. 5). The District Court ruled that the City had a clear and unambiguous residency policy which was consistently applied. (App. 9).

The Court of Appeals

The Eighth Circuit Court of Appeals affirmed the District Court's decision without comment on October 19, 2007. (App. 1).

Plaintiff filed for rehearing. The panel declined rehearing on November 20, 2007. (App. 11).

REASONS FOR GRANTING THE WRIT

The City of Kansas City's residency policy is unconstitutionally vague and ambiguous. The City's unconstitutional residency policy affects all current and future City employees who have no way to ascertain whether or not they are in compliance with the policy.

If a checklist is used as part of the City's calculus in determining compliance with its residency policy, then employees are entitled to know the checklist criteria that will be applied to them so that they can comply with the policy.

During the trial of the instant action, defendants Thigpen, Roper and Greenway testified that the City's residency requirement required plaintiff (and other employees whose residency status was in question) to fulfill enough of the requirements given by defendant Greenway's list of checklist items in order to establish residence by a "preponderance of the evidence" standard. However, none of the criteria given by the checklist items are ever communicated to employees before they are investigated for being in violation of the City's residency policy. Furthermore, the checklist questions and standards may vary from investigation to investigation. City of Kansas City employees, including the plaintiff, are left in the dark about the checklist criteria that will be applied to them during a potential residency determination investigation. This is contrary to Eighth Circuit law. In *Fritzshall v. Board of Police Com'rs*, 886 S.W. 2d 20, 28 (Mo.App. W.D. 1994), the court ruled that if a residency policy required an employee to spend a certain amount of time at an address in Kansas City and to comply with other residency-establishment criteria, then the employee is "entitled to know the specifics of the necessary formula." (During trial, the Court stated that it was not familiar with this law. (App. 31-32)).

In the instant case, the City uses over 34 pages of checklist criteria to develop a "preponderance of the evidence" that an employee is or is not a resident. None of the checklist criteria are made known to employees beforehand. And the checklist criteria and standards to be applied are subject to change as the City "custom tailors" each investigation. Under this scenario, the City can literally terminate any employee for not being a resident by applying to him or her custom-tailored checklist criteria that he or she has never been made aware of and then claiming that "the preponderance of the evidence" proves he or she is not a resident. The City of Kansas City's residency policy at the time plaintiff was employed failed to give employees fair notice of the standard that would be applied to them when and if their residency was questioned.

There exists a constitutional right to be free from unreasonably discriminatory practices with respect to public employment. *Whitner v. Davis*, 410 F.2d 24, 30 (9th Cir. 1969). Municipal residency requirements must be appropriately defined and uniformly applied. That is, they must not be vaguely defined or arbitrarily applied. See *Memorial Hospital v. Maricopa County*, 94 S.Ct. 1076, 1081 (1974); *Dunn v. Blumstein*, 405 U.S. 330, 342 n. 13 (1972). Contrary to the District Court's ruling at the beginning of the trial, Plaintiff should not have to show that he was disparately treated by the City's residency policy to prove that the policy was unconstitutional. The fact that all employees were equally subjected to an arbitrary,

vague and ambiguous residency policy does not make that policy constitutional. The facts presented at trial showed that the City's residency policy is unconstitutional on its face.

Trial testimony revealed that the City does not have any explicit standards for enforcement of the residency policy. Defendant Thigpen testified that the standards to be applied varied with the particular investigation being undertaken. During residency investigations, defendant Greenway employs a 34-page checklist to develop a preponderance of evidence that any given employee complies or does not comply with the City's residency policy. But neither the existence of the checklist nor the questions contained on it are ever communicated to employees prior to the time the City investigates them for potential residency violations.

It is clear that the City's residency policy in effect when plaintiff was terminated was unconstitutionally vague, ambiguous, arbitrary and capricious as applied to plaintiff or to any other City employee. The "void for vagueness doctrine" may apply to civil statutes. Civil statutes that may be void for vagueness generally involve penalties to an individual, such as termination of public employment. *Hampton Foods v. Wetterau Finance*, 831 S.W.2d 699, 701 (Mo.App. E.D. 1992).

As a constitutional due process violation, vagueness takes two forms. One is the lack of notice given a potential offender because the statute is so unclear

that 'men of common intelligence must necessarily guess at its meaning'. The second is that the vagueness doctrine assures that guidance, through explicit standards, will be afforded to those who must apply the statute, avoiding possible arbitrary and discriminatory application. *Hampton Foods*, supra, at 701; *State v. Young*, 695 S.W.2d 882, 884 (Mo.banc 1985).

In *Grayned v. City of Rockford*, 92 S.Ct. 2294, 2298 (1972), the Supreme Court stated, "It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them."

Living under a rule of law entails various suppositions, one of which is that "[all persons] are entitled to be informed as to what the State commands or forbids." *Papachristou v. City of Jacksonville*, 92 S.Ct. 839, 843 (1972) citing *Lanzetta v. New Jersey*, 306 U.S. 451, 453 (1939). In *Papachristou* at 843, the Supreme Court invalidated an ordinance because it encouraged arbitrary and erroneous enforcement (arrests and convictions).

The terms 'arbitrary' and 'capricious' mean "without rational basis." *Campbell Sixty-Six Express, Inc. v. United States*, 258 F.Supp. 529, 535 (W.D. Missouri, S.D. 1966). The terms 'arbitrary' and 'capricious' mean willful and unreasoning action, without consideration of and in disregard of the facts and circumstances. *Jones v. City of Jennings*, Mo.App. 595 S.W.2d 1, 3 (1979); *Psychiatric Healthcare v. Dept. Soc. Serv.*, 100 S.W.3d 891, 900 (Mo.App. W.D. 2003). 'Arbitrariness' focuses on whether a rational basis for a decision exists, while 'capriciousness' concerns whether a decision was whimsical, impulsive or unpredictable. *Division of Transp. v. Sure-Way Transp.*, 948 S.W.2d 651, 655 (Mo.App. W.D. 1997), n. 4. The term 'arbitrary' is synonymous with bad faith or failure to exercise honest judgment. An arbitrary act would be one performed without adequate determination of principle, and one not founded in the nature of things. *Huey v. Davis*, 556 S.W.2d 860, 865 (1977). It is defined as failure to exercise an honest judgment. *Goodrum v. State*, 158 S.W.2d 81, 86 (Tex.Civ.App. 1942).

An arbitrary and capricious municipal decision is reviewable under 42 U.S.C. Section 1983. Due process assures the right to be free from arbitrary or irrational municipal actions destructive of cognizable property interest. *Town of Orangetown v. Magee*, 643 N.Y.S.2d 21, 28 (Ct.App. 1996); *Arlington Hgts. v. Metropolitan Hous. Corp.*, 429 U.S. 252, 267 (1977).

Defendant Kansas City, Missouri's residency policy is unconstitutionally vague under both tests elucidated in the *Hampton Foods*, *State v. Young* and

Grayned cases discussed above. The City employs checklist criteria to determine the preponderance of evidence whether or not a particular employee is compliant with the residency policy but never communicates the criteria to employees. Furthermore, the standards and criteria can vary from investigation to investigation. Under this scenario, it is simply not possible for a person of ordinary intelligence to understand the policy or decide how to comply with it. The lack of any explicit standards governing the actions of those who enforce the policy/ordinance cannot possibly result in anything but arbitrary and discriminatory application of the policy/ordinance.

CONCLUSION

For the foregoing reasons, plaintiff Michael D. Van Deelen respectfully requests the Court to grant his petition for certiorari.

Respectfully submitted,

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United States Court of Appeals
FOR THE EIGHTH CIRCUIT

Nos. 06-1896/3058

Michael D. Van Deelen, Appellant, v. City of Kansas City, Missouri; Wayne Cauthen; John Franklin; John Thigpen; Gail Roper; Richard Razniak, Beth Lacey; Rick Brisbin; Roy Greenway; Patrick Reisenbichler; City of Kansas City, Missouri Human Resources Board; Joseph Moreland; Margaret Evans; Lawrence Franklin; John Doe, (1-10); Jane Doe, (1-10), Appellees.	*	Appeals from the United States District Court for the Western District of Missouri. [UNPUBLISHED]

Submitted: October 5, 2007
Filed: October 19, 2007

Before WOLLMAN, COLLOTON, and BENTON, Circuit Judges.

PER CURIAM.

In these consolidated appeals, Michael Van Deelen appeals the district court's[1] adverse judgment in his action brought under 42 U.S.C. § 1983 for alleged constitutional violations with regard to the termination of his employment with the City of Kansas City, Missouri, for violation of its residency requirement. Following careful review, we affirm the district court's grant of judgment for defendants on all of Van Deelen's claims based on the court's well-reasoned opinions. *See* 8th Cir. R. 47B.

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[1] The Honorable Gary A. Fenner, United States District Judge for the Western District of Missouri.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 06-1896

Michael D. Van Deelen,

Appellant

v.

City of Kansas City, MISSOURI, et al.,

Appellees

No: 06-3058

Michael D. Van Deelen,

Appellant

v.

City of Kansas City, MISSOURI, et al.,

Appellees

Appeal from U.S. District Court for the
Western District of Missouri – Kansas City
(4:04-cv-989-GAF)
(4:04-cv-00989-GAF)

JUDGMENT

This appeal from the United States District Court was submitted on the record of the district court and briefs of the parties.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in

this cause is affirmed in accordance with the opinion of this Court.

October 19, 2007

Order Entered in Accordance with Opinion:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI WESTERN DIVISION

MICHAEL D. VAN DEELEN	)	
Plaintiff.	)	
	)	
v.	)	**Case No. 04-989-CV-W-GAF**
CITY OF KANSAS CITY, MISSOURI, et. al.,	)	
	)	
Defendants.	)	

ORDER

(Filed Mar. 2, 2006)

This action came for trial before the Court, the Honorable Gary A. Fenner, United States District Court Judge, presiding, from February 21, 2006 through February 28, 2006. The question before the Court for trial was whether the City of Kansas City's residency policy was unconstitutionally vague and ambiguous. Having considered the evidence and arguments presented by the parties, the Court now finds the following:

FINDINGS OF FACT

1. The City of Kansas City, Missouri ("City") had a residency policy in effect throughout the Plaintiff's employment which required all City employees to have their true, fixed and permanent home within the city limits of Kansas City, Missouri.

2. The Plaintiff was aware of the requirements of the City's residency policy.

3. The Plaintiff's true, fixed and permanent home throughout his employment with the City was the home he shared with his family in Eudora, Kansas.

4. The plaintiff was never told by a representative of the City's Human Resources Department that he could satisfy the City's residency policy by renting an apartment in Kansas City, Missouri and staying in that apartment on nights prior to work days. The Court finds the Plaintiff's testimony the contrary to be neither credible nor truthful.

5. There was no evidence that a City employee who maintained an apartment in Kansas City, Missouri and a home with his or her family outside of Kansas City, Missouri was found by the City to be in compliance with the City's residency policy.

6. Defendant Gail Roper ("Roper") never waived the City's residency requirement with respect to the Plaintiff. The Court finds that the Plaintiff fabricated the interdepartmental communication allegedly acknowledging the waiver of the City's residency requirement with respect to Plaintiff. The Court further finds that the Plaintiff fabricated the letter from himself to Defendant Roper affirming the alleged waiver of the City's residency requirement and placed it in his personnel file surreptitiously.

7. The Plaintiff claimed to be a resident of both Eudora, Kansas and Kansas City, Missouri during

the time he was employed by the City in order to fraudulently obtain educational, employment and tax benefits.

8. The Plaintiff exhibited anger and resentment towards the City and its employees. The Plaintiff's demeanor revealed controlling motives of revenge, retaliation, and a desire to harass the City and its employees.

9. The Plaintiff has a history of filing pro se litigation: *Van Deelen, et al. v. Martin*, Case No. 2:97-CV-2358-GTV-GLR (D.Kan.) (dismissed without prejudice); *Van Deelen v. Arnold-Burger et al.*, Case No. 6:03-CV-1322-MLB-DWB (D.Kan.) (dismissed pursuant to Fed. R. Civ. P. 41(a)(1)); *Van Deelen v. McAnany*, 6:03-cv-1408-MLB-KMH (D.Kan.) (dismissed pursuant to Fed. R. Civ. P. 12(b)(1)); *Van Deelen v. Shawnee Mission Un, et al.*, Case No. 2:03-cv-2018-CM (D.Kan.) (dismissed pursuant to Fed. R. Civ. P. 12(b)(6)); *Van Deelen v. Fairchild et al.*, Case No. 2:05-cv-2017-KHV-DJW (D.Kan.) (dismissed pursuant to Fed. R. Civ. P. 12(b)(1)); *Van Deelen v. City of Kansas City, Missouri, et al.*, Case No. 2:05-cv-2028-KHV-JPO (D.Kan.); *Van Deelen v. Johnson et al.*, Case No. 2:05-cv-2052-CM-DJW (D.Kan) (dismissed pursuant to Fed. R. Civ. P. 41(a)(1)); *Van Deelen v. Johnson et al.*, Case No. 5:05-cv-4039-SAC (D.Kan.); *Van Deelen v. Fenner*, Case No. 4:06-cv-162-HFS (W.D. Mo.) (dismissed pursuant to Fed. R. Civ. P. 41(a)(1)); *Van Deelen v. City of Kansas City, Missouri, et al.*, Case No. 04-cv-206594 (Jackson Co. Mo.).

10. Regardless of Plaintiff's statement to the contrary at the close of his case, the Plaintiff frequently

made unnecessary, irrelevant, argumentative and condescending comments thereby demonstrating a complete lack of respect and decorum towards the Court, opposing counsel and his own witnesses. The Plaintiff exhibited a proclivity to abuse the legal process by his conduct throughout the litigation.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. sec. 1331.

2. The Plaintiff's "void for vagueness" argument is rooted in the Due Process Clauses of the Fifth and Fourteenth Amendments. *See Stephenson v. Davenport Cmty. Sch. Dist.*, 110 F.3d 1303, 1308 (8th Cir. 1997) *reh'g and suggestion for reh'g en banc denied* (May 30, 1997). A vague regulation violates the Due Process Clause if it fails to provide adequate notice of prohibited conduct or is subject to arbitrary and discriminatory enforcement. *Id.* (internal citations omitted).

3. The City defined residency as a person's "true, fixed and permanent home and principal establishment to which whenever he is absent he has the intention of returning." *See* Sec. 2-972 of the City's Code of Ordinances; *Fritzshall v. Board of Police Comm'rs*, 886 S.W.2d 20 (Mo. App. 1994).

5. The implementing ordinance of the City's residency policy, Sec. 2-972 of the City's Code of Ordinances, is not unconstitutionally vague and ambiguous on its face as it existed at any time during the Plaintiff's employment.

6. Throughout the Plaintiff's employment, the City had a clear and unambiguous residency policy which was consistently applied.

7. The application of the City's residency policy to the Plaintiff did not violate any of the Plaintiff's rights under the First, Fifth, or Fourteenth Amendments of the U.S. Constitution.

8. Additionally, when a plaintiff asserts a claim against a public officer for a violation of his Constitutional rights, the public officer is protected by the doctrine of official immunity when the public officer's "conduct does not violate clearly established constitutional rights of which a reasonable person would have known." *Hawkins v. Holloway*, 316 F.3d 777, 787-88 (8th Cir. 2003).

9. The Court further finds that Defendants Wayne Cauthen, John Franklin, John Thigpen, Gail Roper, Richard Razniak, Beth Lacy, Rich Brisbin and Roy Greenway are protected by the doctrine of official immunity as they did not violate clearly established constitutional rights of which a reasonable person would have known when the promulgated and enforced the City's residency policy and when they interpreted and applied the City's residency policy to the Plaintiff.

JUDGMENT

Based on the foregoing, JUDGMENT should be entered in this matter IN FAVOR OF THE DEFENDANTS and against the Plaintiff. The Plaintiff shall take nothing by his Complaint and the Defendants

shall have judgment for their costs expended in this action.

IT IS SO ORDERED.

/s/ Gary A. Fenner
GARY A. FENNER, JUDGE
United States District Court

DATED: March 2, 2006

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 06-1896

Michael D. Van Deelen,

Appellant

v.

City of Kansas City, MISSOURI, et al.,

Appellees

No: 06-3058

Michael D. Van Deelen,

Appellant

v.

City of Kansas City, MISSOURI, et al.,

Appellees

Appeal from U.S. District Court for the
Western District of Missouri – Kansas City
(4:04-cv-989-GAF)
(4:04-cv-00989-GAF)

ORDER

The petition for rehearing by the panel filed by the appellant is denied.

November 20, 2007

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

MICHAEL D. VAN DELEEN, Plaintiff, vs. CITY OF KANSAS CITY, MO., et al., Defendants.	)	No. 04-00989 February 21, 2006

TRANSCRIPT ON APPEAL

BEFORE THE HONORABLE GARY A. FENNER, UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: Mr. Van Deleen
appearing Pro Se

For the Defendants: Ms. Lana Torczon
Assistant City Attorney
2800 City Hall
414 East 12th Street
Kansas City, Mo. 64106

* * *

[EXCERPTS FROM TRIAL TRANSCRIPT]

[7] Do you want to talk with them for a moment, Ms. Torczon?

MR. VAN DEELEN: Also I reserve the right to call rebuttal witnesses when and if needed.

THE COURT: My feeling, at least at this time, we are here to determine how the city's residency requirements were applied to Mr. Van Deelen, what was represented to him and whether or not the residency requirements, as they were applied to Mr. Van Deelen, were uniformly applied to others or whether or not they were inconsistently applied to others.

That's my opinion of what this matter is about. So, Mr. Van Deelen, are you ready to proceed with your first witness?

MR. VAN DEELEN: Yes, I am, Your Honor. I guess that was my opening statement so thank you for doing it.

THE COURT: I guess there is one other thing about the tape recorder you brought here.

* * *

[Excerpts from defendant Thigpen's trial testimony]

[84] MR. VAN DEELEN: I call to the stand John Thigpen.

JOHN THIGPEN

having been sworn, testified:

DIRECT-EXAMINATION

BY MR. VAN DEELEN:

THE COURT: Sir, Would you state your name for the record.

THE WITNESS: John Thigpen, the III.

THE COURT: How do you spell your last name?

THE WITNESS: T-h-i-g-p-e-n.

THE COURT: Thank you.

MR. VAN DEELEN: Thank you, Your Honor.

Q Mr. Thigpen, are you currently employed by the City of Kansas City?

[85] A Yes, I am.

Q In what capacity, sir?

A I am the contract and branch manager for the City of Kansas City, Missouri Water Department.

Q Have you ever been a Human Resources Director?

A Yes, I have.

Q When were you the Human Resources Director.

A For the City of Kansas City?

Q Yes.

A From 1997 through approximately November, 2003.

Q So if I tell you that it has been stipulated I was employed in August of 2000 and terminated or suspended in November of 2002 you would have been

the Human Resources Director during that period of time, is that correct?

A Yes.

Q As the Human Resources Director, what were your duties?

A My duties as a director, report to the city manager, was to manage the Human Resources Department and all of its functions including hiring, termination, promulgated human resources rules and regulations, making sure they were enforced properly.

Q. What does promulgate mean?

A. That means I would draft regulations, or my staff would at my direction, review them with the city manager and [86] then issue them to the departments as per his approval.

Q So in part of these ordinances were the residency ordinance, is that correct?

A Yes.

Q Were you implementing city policy, that is did you interpret policy on behalf of the city concerning the residency ordinance?

A Up to a certain point, yes.

Q When was that point?

A When Mr. Greenway became the internal auditor for the city he took over the role of investigating and dealing with the residency ordinance and

primarily dealt with all those issues. The only time I would be involved if I was asked a question.

Q And my specific question and thank you for answering my previous one, but is when I said did you interpret policy, I wasn't talking about just investigating suspected residency violators but were you charged with taking the city's residency policy and interpreting it in terms of promulgating the rules and regulations and so on and so forth.

A The rules and regulations were codified either in the ordinance or human resource rules and policy manuals. At those times when they were needed to be read or somebody needed a question I would answer it, yes.

* * *

[161] THE COURT: I guess to some extent it would be a pretty hollow victory if you were to prevail and had a ordinance no longer in effect under the issues of damages.

MR. VAN DEELEN: I will take it.

THE COURT: I bet you would.

MR. VAN DEELEN: That's my whole point. What I was talking to Mr. Thigpen is that I was terminated.

THE COURT: Nonetheless I tell you it is a very, as I said earlier, a very, very difficult burden to overcome to show an ordinance is facially unconstitutional. And to me the most persuasive position you

could take would be to show that the city engaged in disparate treatment in the way your circumstance was handled.

I am not here to decide whether the city did everything right and whether the city dotted all the I.s or crossed all the T.s. I am here to decide a constitutional question and it's a very broad thing. It's not a matter that is overly consumed by the details. At any rate, you may proceed with Mr. Thigpen.

MR. VAN DEELEN: Judge, could I say two minutes worth of something to respond. I didn't make an opening statement and I should have after –

THE COURT: I didn't ask for one so you didn't really have that opportunity.

* * *

[177] concerned the term residence was clearly understood by the employees of the city. Nobody ever had a problem with it. Nobody ever questioned him about it. I don't have to go out and conduct some survey or interview everybody and make certain that they do know and they do understand that and they are in compliance.

Now if there is some evidence of some widespread problem or some confusion among employees and they don't take steps to correct that, that's a different story but you want to just speculate nobody knew what residence meant and Mr. Thigpen says that wasn't the case.

MR. VAN DEELEN: He's guessing, sir.

THE COURT: He's speaking from what his experience was. Now you have the opportunity to prove what he says is wrong which you are not going to prove through him because he's telling you what his testimony is. You can argue with him for a long time if you want but you have already been arguing with him for a good part of the day and I haven't seen his position change.

Q Let's move on then. This preponderance of evidence concept, during your deposition you stated when someone needs to prove up or rather the city needs to prove someone isn't a resident you look at the preponderance of evidence. Do you remember testifying to that?

A Yes.

[178] Q What is the preponderance of evidence?

A It could be a number of factual pieces of proof someone provides to us at that time I was HR director, which taken all together, would prove they are a resident of the city.

Q What would be some?

A That show us they have a voting registration at the address they purport to live at. They could show us where they filed their taxes with the same address. They could show us where their family lives. They can prove to us that in fact that is their residence where their family lived, where the majority of

their personal belongings are kept and do intend to return every night and do return every night. They could show us utility bills. They could show us mortgage documents. Any number of those things taken together in its entirety could prove they are a resident of the city.

Q You mentioned voting registration, where you file your taxes, where your family lives, where you return every night, your mortgage is, utility bills, anything else you can think of?

A We have had people bring divorce papers saying they are no longer married to that person, they no longer live in that house.

Q Bank accounts?

[179] A No, we don't usually take bank accounts. You can have a bank account anywhere but you could submit a bank account with an address on it and that could be taken as a piece of proof but it would not necessarily be determinative.

Q Who is this submitted to, these proofs.

A If there is a current investigation going on, at that time it would have been submitted to Mr. Greenway. If no investigation on and the court was, then it would be determined to Mr. Kitchen who was the manager of illegal aliens.

Q I have what is marked as Plaintiff's 152. Can you see that?

A Yes, I see it.

Q Do you recognize it?

A No, I don't.

Q If I were to tell you this is one of the, Roy Greenway, that is part of his checklist, what he used in his investigation to determine whether or not an employee was a resident or not, does that make sense to you?

A I have never seen the document before but it certainly could be something he would use.

Q You have never seen this from Mr. Greenway?

A No – I won't say I have never seen it. I will say I don't remember seeing it. It may have been in the [180] file when I glanced.

Q At least keepsakes, is that one of the things that could be part of the preponderance of evidence. Were your keepsakes, you can see he has listed on the first page what my purported address in Kansas City and my address where I used to live and where I live now in Eudora Kansas, he wanted to know where I kept my keepsakes, is that something that would be part of the preponderance of evidence?

A From Mr. Greenway's interpretation it very well could be.

Q Heirlooms, awards, prizes, pictures, hand-me-downs, that whole list is that something, legal document, tax returns you mentioned marriage license, voter registration, birth certificate are those

all things that could be items of preponderance of evidence?

A It appears that's what he used, yes.

Q You have added some. I will flip over to page two. Here is some more stuff. It's got on there types of mail that I have received from banks, financial institutions, where you get your mail, that could be one of them, right?

A It could be but people have used mail-drops before.

Q And the third page its got on there your title [181] mortgage, gas water, those are other preponderance of evidence things, is that correct?

A That's correct.

Q So we have got, okay, the final page it has where your stuff is, your furniture, radio, things like that, your camera and video recorder and yard tools all that stuff on this page is something that could be part of the preponderance of evidence, correct?

A From Mr. Greenway's standpoint it appears –

Q You say Mr. Greenway's standpoint, are you talking about the city's standpoint?

A Mr. Greenway was representing the city during that time, yes.

MR. VAN DEELEN: They're four pages and I move to admit Plaintiff's 152 into evidence.

MS. TORCZON: No objection.

THE COURT: Received.

(PLAINTIFF'S EXHIBIT 152 WAS RECEIVED IN EVIDENCE.)

Q So they're four pages of stuff on there that can be used to part of this preponderance of evidence. And then you listed several things yourself, about ten of them. So I guess there was some kind of a formula that Mr. Greenway used and you used to determine residency. Were employees notified of the specifics of what the formula was?

A I don't believe we used a formula. At least I [182] didn't use a formula. I can't speak to Mr. Greenway's use of a formula.

Q I am referring to formula, these things you look at as preponderance of evidence. That's a formula, does he do this, a checklist?

A I would agree that's a checklist.

Q Were employees told what the checklists entailed or what was in the checklist?

A No, because while we asked our employees to live within the City of Kansas City, Missouri corporate city limit, if they chose not to do so and we investigated them and find they did not or there was reason to believe they did not then we used this list to give the employee an opportunity to prove they lived within the City of Kansas City, Missouri.

Q You had things and domicile and residency and was in there. Those things are very general, contain two or three sentences even if you agree they're accurate. Yet you have four pages of checklist Mr. Greenway used and you have some items you have just given me which kind of serve to further define what it entails to be a resident of Kansas City. Don't you think that the employees should have the opportunity to know what those items are you have that further define the concept of residence?

A Well, I don't think that's pertinent. Those items [183] are only used if there was allegations an employee was not a resident and we were giving the employee every opportunity to prove to us that they were. 99 and nine-tenths comply with the residency requirement so there was no need to prove anything to us.

Q Again you are saying, how do you know that 99.9 percent comply?

A Because we had very few terminations for residency.

Q Again, it's, wouldn't it be fair to let somebody that is innocent who has been told say or ITD, like I was, to move and that was it, move into the city to give the parameters to those people to tell them here's what we are going to look at and if you miss a certain number of a checklist we are going to determine you haven't moved, you don't think that would be fair to –

A When an employee is told to establish residency within the City of Kansas City, Missouri that's pretty clearly standard and we shouldn't have to explain every detail what we are going to try to prove they don't. All they have to do is move in and everything is line [sic].

Q They have to look at the ordinance like 981023?

A Residence is residence. I don't know if they need to look at the ordinance.

Q So residence is residence, don't need to look at [184] the ordinance. I am trying to focus what the word is that employees should have picked up to know that they should have moved into, they should have done all these things to comply with the checklist. The word residence seems to be what you are saying by telling someone you need to become a resident they should know what that means?

A Yes, because I never had anybody ask I don't know, I really don't know what that means, never. Residence, I know what that means. I am going to move in the corporate limits of Kansas City and they did or they didn't.

Q So the residency policy itself required employees to spend a certain amount of time in Kansas City, correct?

A It required them to establish residency in the City of Kansas City which meant they were in fact a legal resident of the city.

Q As you are defining residence in terms of itself. What did, if we could talk about what residence requires and we have seen a bunch of checklist things. Requires you to do some of those things on a checklist, right?

A It doesn't require you to do anything. What it requires you to do is to establish you are a resident of the City of Kansas City which means you live here, you pay taxes here, depending on what county you pay county taxes. You pay state taxes. You pay all the local taxes. You have established that this is your home. This is where you [185] intend to return every night. In 99 percent of the cases I was familiar with that's where your family was and the one percent I didn't, I say weren't because people were in the process of moving and maybe the family was out of state and they were being employed from out of state.

Q. One of the things the residency requirement specifically entails someone you said returned to their home in the city at night, correct?

A I said every day.

Q Returned there every day. And so that implies they had to spend a certain amount of time in the residence, in the place they were calling the residence?

A. I think it entails they establish that's the place they call their home, yes.

Q But you are answering my questions with statements that aren't exactly answers. So I am just

trying to get you to say is it true that establishing residence requires employees to spend a certain amount of time in the abode they are claiming is their residence in Kansas City. You can say yes or no.

A If you are asking me to define the time they spent, no, I can't define the time but it would entail they spend time at the residence they establish as their residence.

Q Okay. On this preponderance of evidence, what [186] does preponderance mean to you?

A That's a legal definition that it means to me there is more than sufficient supporting weight to clearly establish one thing or the other.

Q So is it getting 95 percent on your checklist score or how is that determined, and who determines that, what someone has to do to get through all this checklist with a preponderance of evidence?

A It generally is the third party finder-of-fact in cases of the city, would either Mr. Greenway or Mr. Kitchen before Mr. Greenway.

Q Mr. Greenway, he's the one that dealt with me. He would be the one that would determine what the preponderance of evidence was?

A Yes, he would make a recommendation based on his evaluation of the evidence.

Q And did you give Mr. Greenway any guidance how to determine what the preponderance of evidence was?

A No, he was, he consulted with the law department in that regard.

Q You know for a fact he did?

A. He told me he did. I had no reason to disbelieve him.

Q So he told you he consulted with the law department and they gave him advice how to do that calculus [187] of what the preponderance of evidence is and how to determine when that falls in your favor or when it falls against you?

A No, he didn't tell me. He told me he consulted with the law department how to go about the investigation and how to complete the investigation and what information he was to gather to determine the preponderance of the facts.

Q When did he tell you that?

A Relatively early in his tenure.

Q When would that have been?

A I don't remember the exact date. It would have been just after he asked me to define residency for him.

Q And when was that?

A I don't remember the date.

Q Was it before I was terminated?

A Yes.

Q And again I am going to look at Plaintiff's 62 and we have admitted this into evidence. And it's Mr. Reisenbichler's notice to me we are going to have a pre-determination hearing and here are the results of Mr. Greenway's investigation of me. I would just like to show you some of the things and we can add to that checklist. It says number A. that I said trash day was the day he didn't think it was.

* * *

[197] Q Do you consider, let me ask you this. My interpretation from what we talked about in this preponderance of evidence analysis, that is the analysis that is done by the city in determining whether or not someone is a resident, is that correct. You are basically looking at these checklists of things and deciding –

MS. TORCZON: Objection, asked and answered.

THE COURT: Yes, I understand the process, I think you have established that.

MR. VAN DEELEN: Okay.

Q Would you call that an explicit standard of enforcement of that ordinance?

A I am trying to determine what you mean by explicit.

Q I mean something that can be understood, that is written out. If Mr. Greenway were to decide he's going to move to Florida, that someone who came

in and took his place would be able to do exactly the same thing he did. In other words, it's rules, writing, here is the standard we use, here is what you do when you are doing a residence [198] investigation. Those are explicit standards. Those are things that, it's a cookbook, it's something that tells someone what to do, when to do it and how to do it?

A I would suggest to you there is a general template but each situation has different factual standards which would call for it to be, the investigation might be conducted slightly differently.

Q Okay, when you say there is a template, just what is that, sir?

A That is essentially in consultation with the law department, whoever is conducting the investigation would determine what the standards are for that particular investigation.

Q In each particular investigation the person has to consult with the law department to determine the standards?

A They very well might, yes.

Q There is nothing in writing again about the fact they should do that?

A Well, the person that has that responsibility knows they have to do that.

Q Knows they have to talk to the law department?

A Yes.

Q You know that how?

A Because that is one of the pieces of information that is given to someone who is occupying the internal

* * *

[Excerpts from defendant
Greenway's trial testimony]

[439] Q Because I would just simply – that's okay.

A Again these were the reasons that helped me form my opinion.

Q Right, we are not going to go through them all. But these were basically things that took place in my interview, is that correct?

A I believe so.

Q And so for example you have got in terms of the interview things which doesn't include, number one, the surveillance.

MS. TORCZON: Object, that's irrelevant.

THE COURT: What is the relevance of this?

MR. VAN DEELEN: Again I am getting at the checklist or the criteria that he used to determine whether or not at least I was a resident, I was a resident and the law stated when you have a checklist or

criteria used to determine whether or not a person is a resident that checklist or criteria has to be given to the employee and I will provide you with a citation with that in due time.

THE COURT: I am not familiar with that law so you better give me that case.

* * *

[444] and asked you to complete during that interview.

Q There is actually, let me just hand it to you. I think they're four pages and it's a similar document on each page where you are basically asking about various criteria and applying those criteria to two addresses, to try to determine which address I was at, is that correct?

A These documents are in the form of a note from you to me regarding various elements that might be helpful in determining the residency.

Q I didn't come up with those documents, did I, that was your idea to have a note from me to you, wasn't it?

A That's correct.

Q You prepared them, composed them, prepared them, printed them off and gave them to me and that was the first time I saw them was on November 8th, is that correct?

A I believe it was.

Q Okay. So we have got four, one, two, three, four, five full pages of questions up and down. We have got, that has been admitted. We have got 34 pages of questions. And then you said there were questions on there that you didn't ask but there were others you did.

A They are notes, not a transcript.

Q I know it's not a transcript but basically the notes are questions to ask me?

A They were reminders to me of things to ask; some I

* * *

[633] THE COURT: Received.

(PLAINTIFF'S EXHIBIT 207 WAS RECEIVED IN EVIDENCE.)

Q Is this checklist, is this a document that you use in all of your investigations?

A This is a document I used in most, if not all. Again the facts may differ.

Q Generally this is the document you used?

A Yes, this is the document I would have used, parts of it sometimes; sometimes it's the whole thing.

Q I am going to show you what has been marked as Plaintiff's 205. Do you recognize that document, Mr. Greenway?

A I believe phone listings.

Q Let me ask you this, is this my phone records you found as part of your investigation?

A Yes.

Q And THE first phone record, the earliest time you did that was April 1, 2002, is that correct?

A I believe that may be the case. I am looking right here at the various ones trying to put them in order and I believe April 1st is the first on the list I have.

Q I marked this as Plaintiff's 205 and you gave me a bunch and you have copies of them, don't you?

A Yes, right here.

Q So if you could just look at those copies and

* * *

[Excerpts from Cecilia Abbott's trial testimony]

[769] been marked as Plaintiff's 120 and plaintiff's 152. One is interview notes and then another one is a form that just has a list of items, heirlooms, keepsakes, et cetera.

A Yes.

Q Have you reviewed those forms before?

A Yes.

Q During the process of coming up with a procedure in the residency investigation you reviewed

those documents and I think, I believe Mr. Greenway varied them concerning the situation in each case?

A Right, he tailors them for the particular case.

Q Those are true and accurate copies of those documents?

A True and accurate copies of the ones he presented to me, yes.

Q Those are the forms that have been developed investigating residency, is that correct?

A That's the basic template, yes.

Q I am showing you Plaintiff's 26 and that's just detailed surveillance records and residency investigations that is used quite often, is that correct?

A Yes.

[774] BY MR. VAN DELEEN:

Q Good morning, Ms. Abbott.

A Good morning.

Q I just have a couple follow-up questions. I want to make sure I understand the testimony that you gave. If you need me to show you the documents I will but Ms. Torczon introduced Plaintiff's 120 and 152 which were the interview notes basically. They were the interview notes and you said these were the basic template you would review those?

A Yes.

Q I want to make sure, did you specifically review the interview notes that Mr. Greenway had prepared in my case?

A Prior to the H. R. board case, yes.

Q Did you, prior to Mr. Greenway using those interview notes in my case on November 8?

A Before he met with you?

Q. Yes.

A So before you had completed them?

Q He met with me on November 8, 2002 and that's the time he used the interview notes to interview me, had you approved them before that?

A What she showed me were interview notes with the lines completed and I guess I am making a distinction between whether you filled them in or he filled them in and [775] whether they're blank.

Q I am making a distinction. There was, Mr. Greenway has produced Plaintiff's 209. And those were alleged to be the interview notes before he completed them. Did you review this, Plaintiff's 209?

A I probably reviewed them before he met with you.

Q And you stated that surveillance could be performed any time?

A Yes.

Q Before the interview, after the interview?

A Or not at all, yes.

Q Or not at all. On what basis do you state that?

A I have given Mr. Greenway broad categories of facts that I am looking for if I have got to prove someone has violated the city residence requirement and it's up to the investigator to determine the best course for him or her to follow to gather those facts.

Q Have you given him a document that contains those broad categories of facts?

A I believe it was verbal.

Q Have you ever communicated those facts to the employees in general?

A No.

Q Can you list some of those facts?

A Look at where the person is physically spending [776] the night, on weekends and work days, where they recreate, where they socialize, where they exercise control over the home as far as mowing the lawn, taking out the trash, those type of day-to-day household activities, the location where that is being performed, where that person's immediate family members reside, especially if they're minor children, where they're minor children reside. Where they spend their down time, where their personal belongings are. We also look at documents such as driver's

license, bank accounts, registering cars, voter I. D. health insurance forms, review the city forms to see what addresses are listed there.

Q Does the city do surveillances now?

A I don't know.

MR. VAN DELEEN: Thank you.

THE COURT: Ms. Torczon, anything further.

MS. TORCZON: No.

THE COURT: Thank you, ma'am. Mr. Beaufort here?

* * *